

1:CV 01-1176

CLOSED

U.S. District Court  
Southern District of New York - Civil Database (Foley Square)

CIVIL DOCKET FOR CASE #: 01-CV-5504

Bruzon v. I.N.S.

Filed: 06/19/01

Assigned to: Chief Judge Michael B. Mukasey

Nature of Suit: 530

Demand: \$0,000

Jurisdiction: US Defendant

Lead Docket: None

Dkt# in other court: None

Cause: 28:2241 Petition for Writ of Habeas Corpus (Federal)

CARLOS BRUZON  
petitioner

Carlos Bruzon  
[COR LD NTC] [PRO SE]  
Pike County Jail  
HC 8 Box 5601  
Hawley, PA 18428

COPY

v.

IMMIGRATION & NATURALIZATION  
SERVICE  
respondent

FILED  
SCRANTON

JUN 27 2001

PER Jr  
DEPUTY CLERK

Proceedings include all events.  
1:01cv5504 Bruzon v. I.N.S.

CLOSED

CARLOS BRUZON

petitioner

v.

IMMIGRATION & NATURALIZATION SERVICE

respondent

Proceedings include all events.

1:01cv5504 Bruzon v. I.N.S.

CLOSED

6/19/01 1 DECLARATION IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS by Carlos Bruzon. (jco) [Entry date 06/25/01]

6/19/01 2 PETITION for writ of habeas corpus pursuant to 28 USC 2241. (jco) [Entry date 06/25/01]

6/19/01 -- Magistrate Judge Andrew J. Peck is so designated. (jco) [Entry date 06/25/01]

6/19/01 3 ORDER, Accordingly, in the interest of justice, the Clerk of Court shall transfer this case to the United States District Court for the Middle District of Pennsylvania. Furthermore, it is ordered that petitioner's removal or deportation is hereby stayed pending further order by the United States District Court for the Western District of Louisiana. The Clerk of Court is also directed to serve a copy of this order and the underlying petition on the United States Attorney for the Middle District of Pennsylvania who is further directed to inform the Immigration and Naturalization Service forthwith of the stay of removal. That provision of Rule 83.1 of the Local Rules of the Southern District of New York which requires a five day delay is waived. SO ORDERED ( signed by Chief Judge Michael B. Mukasey ); Copies mailed. Sent a copy of this order and the petition upon the U.S. Attorney for the (Middle) District of Pennsylvania via Certified Mail #: 7099 3400 0014 3067 7763. (jco) [Entry date 06/25/01]

6/19/01 -- Interdistrict transfer to the Middle District of Pennsylvania. Sent original file along with a certified copy of the sheet and transfer order via Federal Express AIRBILL # 8267 4042 0133 on 6/25/01. (jco) [Entry date 06/25/01]

A TRUE COPY  
JAMES M. PARKISON, Clerk  
By Julie Correa  
Deputy Clerk

1:CV 01-1176

**DOC #**

**Plaintiff**

v

**Defendant**

APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF  
FEES AND AFFIDAVIT

CASE NUMBER:

1. Carlos Brugos

declare that I am the (check appropriate box)

petitioner/plaintiff/movant  other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC. §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated?:  Yes  No (If "No" go to Part 2)

If "Yes" state the place of your incarceration Pike County Jail

Are you employed at the institution? \_\_\_\_\_ Do you receive any payment from the institution? \$1,00 at ~~and~~

2. Are you currently employed?  Yes  No

a. If the answer is "Yes" state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. if the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

- a. Business, profession or other self-employment
- b. Rent payments, interest or dividends
- c. Pensions, annuities or life insurance payments
- d. Disability or workers compensation payments
- e. Gifts or inheritances
- \_\_\_\_\_ Any other sources

If the answer to any of the above is "Yes" describe each source of money and state the amount received and what you expect you will continue to receive.

If the answer to any of the questions in part three is yes, describe each source of money and state the amount received from each during the past months.

---

4. Do you own any cash or do you have money in a checking or savings account?

YES        NO ✓ (Including any funds in prison accounts)

If the answer is yes, state the total value owned.

---

5. Do you own any real estate, stock, bonds, notes, automobiles, or other valuable property (including ordinary household furnishings and clothing)?

YES        NO ✓

If the answer is yes, describe the property and state its approximate value.

---

6. List the person(s) who are dependent upon you for support, state your relationship to those person(s), and indicate how much you contribute toward their support at the present time.

---

7. If you live in a rented apartment or other rented building, state how much you pay each month for rent. Do not include rent contributed by other people.

---

8. State any special financial circumstances which the court should consider in this application.

I understand that a false statement or answer to any questions in this declaration will subject me to the penalties for perjury.

I declare under penalty of perjury that the forgoing is true and correct.

signed this CARLOS BRUZON day of 4/24, ~~2001~~ 2001.

CARLOS BRUZON  
(signature)

AO 240 (1/94)

4. Do you have any cash or checking or savings accounts?  Yes  No  
 If "Yes" state the total amount. \_\_\_\_\_

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or other valuable property?  Yes  No  
 If "Yes" describe the property and state its value. \_\_\_\_\_

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

4/24/2001

DATE

CHARLES BRUZON

SIGNATURE OF APPLICANT

### CERTIFICATE

(Incarcerated applicants only)  
 (To be completed by the institution of incarceration)

I certify that the applicant named herein has the sum of \$ 65.40 on account to his/her credit at (name of institution) Pike County Jail. I further certify

that the applicant has the following securities to his/her credit: N/R

I further certify that during the past six months the applicant's average balance was \$ 140.04.

4/25/01

DATE

Kathleen Cronin

SIGNATURE OF AUTHORIZED OFFICER

DOC # 2

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE MUKASEY

Carlos Bruzon

01 CIV. 5504

Full name and prison number (if any) of petitioner

vs.

Name of Respondent

Immigration And Naturalization Service

28 USC § 2241

Case No.

Clerk to supply

JUN 27 2001

FILED  
SCRANTONPETITION FOR WRIT OF HABEAS CORPUS  
BY PERSON IN FEDERAL CUSTODYPER AN DEPUTY CLERK

## INSTRUCTIONS — READ VERY CAREFULLY

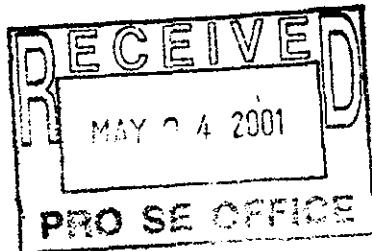
To be considered by the District Court, this petition must be in writing, legibly handwritten [in English] or typewritten, attested to by the petitioner. Answers to each applicable question must be concise. If the space is too small for the answer to a particular question, finish it on the reverse side of the page or insert an additional blank page, making clear to which question the continuing answer refers.

Every petition for habeas corpus must be attested to. A false statement of material fact in the petition may be made the basis of prosecution and conviction for perjury. Petitioners should take care that their answers are true and correct.

If the petition is taken in forma pauperis, it shall include an affidavit [attached at the back of the form] setting forth information that will establish whether petitioner will be unable to pay the fees and costs of the habeas corpus proceedings.

When the petition is completed, the original and two copies shall be mailed to the Clerk of the District Court for the Southern District of New York.

1:CV 01-1176



1. Place of detention Pike County Jail HC 8 Box 8601 Hawley, PA 18428

2. Name and location of court which imposed sentence I.N.S.

Detention Center in Texas: Name and address unknown.

3. The indictment number or numbers [if known] upon which and the offense or offenses for which sentence was imposed:

(a) A# 22-801-576

(b) \_\_\_\_\_

(c) \_\_\_\_\_

4. The date upon which sentence was imposed and the terms of the sentence:

Ordered deported from the United States to Cuba

(a) by an Immigration Judge April 23, 1992.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

5. Check whether a finding of guilty was made

(a) after a plea of guilty /N/A/

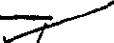
(b) after a plea of not guilty /N/A/

(c) after a plea of nolo contendre /N/A/

6. If you were found guilty after a plea of not guilty, check whether that finding was made by

(a) a jury 

(b) a judge without a jury 

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes / No / 

8. If you answered "Yes" to (7), list

(a) the name of each court to which you appealed:

N/A

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each court to which you appealed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or order entered pursuant to such results:

i. Appeal to B.I.A. is futile Because of Constitutional Issue.

ii. See Matter of Gonzalez, 21 I&N Dec. 937 (B.I.A. 1997)

iii. Matter of C-, 20 I&N Dec. 529 (B.I.A. 1992)

9. State concisely all the grounds on which you base each allegation that you are being held in custody unlawfully:

(a) The Immigration Judge Violated petitioners Due Process Rights by denying him a bond/bail

(b)

THE CONTINUOUS DETENTION OF PETITIONER VIOLATES HIS  
SUBSTANTIVE AND PROCEDURAL DUE PROCESS RIGHTS UNDER THE FIFTH  
AMENDMENT OF THE UNITED STATES CONSTITUTION.

(c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Petitioner contends that respondent (I.N.S) violated his Due Process Rights by denying him a bail. It is very relevant to state here that many court's have ruled that depriving petitioner a bond violates the Due Process Clause of the Fifth Amendment of the U.S Constitution.

See Agunobi V. Thornburgh, 745, F.supp. 533 (N.D.Ill 1990); see also Paxton V. I.N.S ,745 F.supp. 1261 (E.D. Mich. 1998); Accord Demelo V. Cobb, 936 F.supp 30; Caballero V. Caplinger, 914, F.supp. 1374 (E.D. CA. 1996). All these fact point to the fact that petitioner is entitled to an individualized bond

## RESPONSE TO QUESTION 10 CONTINUES:

and the absence of it violates procedural due process. Accord Joe V. Thornburgh, No. 90-12313-2-20, 1990 WL 167457 (D. Mass 1990); Bovayad V. Holmes, 74, F. supp 2d. 471 (E.D.PA. 1999) holding that mandatory detention of ALIEN PENDING REMOVAL proceeding unconstitutional abridged aliens fundamental right to liberty under due process clause, and Rogowski V. Janet Reno, civil No. 3:99 CV. 790 (PCD), 21 immigr Rptr. A3-15 (A. Conn. Oct 28, 1999) holding that I.N.A. §236 is unconstitutional on due process grounds.

It is incontestable that the failure of respondent (I.N.S.) to give petitioner a bond violated his due process rights.

Petitioner contends that his continued detention with no likelihood of removal in the foreseeable future violates his due process rights.

The due process clause of the Fifth Amendment states that "no person...shall be deprived of life, liberty, or property without due process of law". U.S. Const. Amend. V. As its protection extends to all "persons" within the borders of the United States it encompasses deportable aliens such as petitioner.

See Landon V. Plasencia, 459 U.S. 21, 32-33, 74 L.ED. 2d 21, 103 S.ct. 321 (1982); see also United States V. Balsys, 524 U.S. 666, 671, 141 L.ED. 2d. 575, 118 S.ct. 2218 (1998) holding that "resident aliens...are considered "persons" for purposes of the Fifth Amendment and are entitled to the same protection under [Self-Incrimination] clause as citizens".

(citing Kwong Hai Chew V. Colding, 344 U.S 590, 596, 97, L.ED. 576, 73 S.ct. 472, (1953)); Wong Wing V. United States, 163 U.S 228, 238, 41 L.ED. 140, 16 S.ct. 977 (1896) (holding that "persons within the territory of the U.S...[and] even aliens...[may not] be deprived of life, liberty, or property without due process of law").

RESPONSE TO QUESTION 10 CONTINUES:

There is another important factor to be considered in determining if the detention of petitioner is excessive in relation to the Government's interests: the likelihood that the I.N.S will be able to effectuate deportation. See Phan, 56 F.supp. 2d. at 1156. stating that, If deportation can never occur the Government's primary legitimate purpose in detention-- executing removal--is non-sensical, and the other derivative purposes cannot support indefinite detention.

As the probability that the Government can actually deport an alien decreases, the Government's interest in detaining the aliens becomes less compelling and the invasion into the aliens liberty more severe, Id. Accordingly, the court "must necessarily balance the likelihood that the Government will be able to effectuate deportation, against dangerousness of a petitioner and the likelihood that he will abscond if released" Id, the length of time that a petitioner is detained is an important factor in this analysis.

Petitioner is a citizen of Cuba, a country that has no relationship with the United States and the chance of his being removed are very unreal. Petitioner has been living in the United States for over 20 years and has an American born wife and also two american born children here in the United States, petitioner has been in the custody of the I.N.S for over 6 months and asserts that his continued detention violates his Fifth Amendment Rights.

In conclusion, petitioner is respectfully requesting a AUTOMATIC STAY OF DEPORTATION PENDING THE OUTCOME OF THIS Habeas Corpus and that his case be remanded back to the Immigration Judge for a Bond/Bail, and any other relief this court deems fair and or adequate.

Respectfully Submitted:

Carlos Bruzon Guillen  
A# 22-801-576

11. Have you previously filed petitions for rule 41 suspens, motions under section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?

Yes  No

12. If you answered "Yes" to (11), list with respect to each petition, motion or application

(a) the specific nature thereof

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_ N/A

(b) the name and location of the court in which each was filed:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_ N/A

(c) the disposition thereof:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_ N/A

(d) the date of each disposition:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_ N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. \_\_\_\_\_ N/A

ii. \_\_\_\_\_ N/A

iii. \_\_\_\_\_ N/A

13. If you did not file a motion under section 2255 of Title 28, United States Code, [or if you filed such a motion and it was denied] state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention:

(a) N/A (SEE 9&10)

(b)

(c)

14. Has any ground set forth in or been previously presented to this or any other federal court by way of petition for habeas corpus motion under section 2255 of Title 28, United States Code, or any other petition, motion or application?

Yes  No

15. If you answered "Yes" to (14), identify

(a) which grounds have been previously presented:

i. \_\_\_\_\_ N/A  
 ii. \_\_\_\_\_ N/A  
 iii. \_\_\_\_\_ N/A

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_ N/A  
 ii. \_\_\_\_\_ N/A  
 iii. \_\_\_\_\_ N/A

16. Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? Yes  No

(b) your trial, if any? Yes  No

(c) your sentencing? Yes  No

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes  No

(e) preparation, presentation or consideration of any petition, motions or applications with respect to this conviction, which you filed?

Yes  No

17. If you answered "Yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you:

i. \_\_\_\_\_

N/A

\_\_\_\_\_

ii. \_\_\_\_\_

N/A

\_\_\_\_\_

iii. \_\_\_\_\_

N/A

(b) the proceedings at which each attorney represented you:

i. \_\_\_\_\_

N/A

ii. \_\_\_\_\_

N/A

iii. \_\_\_\_\_

N/A

18. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information in instructions, page 1 of this form?

Yes



No



I, Carlos Bruzon Guillen, state under  
(Print (legibly) or type full name)

penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2001

(Month) (Date) (Year)

CARLOS BRUZON  
(Petitioner)

01 CIV. 5504

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS BRUZON,

Petitioner,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

X

TRANSFER ORDER

X

DOC # 3

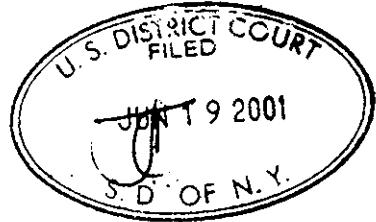
1:CV 01-1176

Petitioner, presently detained at the Pike County Jail in Hawley, Pennsylvania, brings this petition pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.<sup>1</sup> Petitioner alleges that respondent violated his right to due process by denying him bail. He also contends that his continuing detention is unconstitutional. For the following reasons, this petition is hereby transferred to the United States District Court for the Middle District of Pennsylvania.

It is well settled that in order to entertain a habeas corpus petition under 28 U.S.C. § 2241, a court must have jurisdiction over the custodian. See Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 494-95 (1973) (writ of habeas corpus does not act upon the prisoner who seek relief, but upon his or her custodian). The custodian is "the warden of the prison or facility where the detainee is held" or the official in charge of the facility that has day to day control of the

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<sup>1</sup> This Court's Pro Se Office received the instant petition on May 4, 2001.



prisoner. Yi v. Maugans, 24 F.3d 500, 507 (3d Cir. 1994); Eltayeb v. Ingham, 950 F. Supp. 95, 98 (S.D.N.Y. 1997); Carvajales-Cepeda v. Meissner, 966 F. Supp. 207, 208 (S.D.N.Y. 1997); Guerrero-Musia v. Reno, No. 98 Civ. 2779 (HB), 1998 WL 273038 (S.D.N.Y. May 28, 1998).

Petitioner is presently detained by the INS at the Pike County Jail in Pennsylvania. Thus, habeas venue lies in the Middle District of Pennsylvania where Pike County is located. 28 U.S.C. § 1406(a).

Accordingly, in the interest of justice, the Clerk of Court shall transfer this case to the United States District Court for the Middle District of Pennsylvania. Furthermore, it is ordered that petitioner's removal or deportation is hereby stayed pending further order by the United States District Court for the Western District of Louisiana. The Clerk of Court is also directed to serve a copy of this order and the underlying petition on the United States Attorney for the Middle District of Pennsylvania who is further directed to inform the Immigration and Naturalization Service forthwith of the stay of removal. That provision of Rule 83.1 of the Local Rules of the Southern District of New York which requires a five day delay is waived.

SO ORDERED



MICHAEL B. MUKASEY  
Chief Judge

JUN 19 2001

Dated: New York, New York

A TRUE COPY  
JAMES M. PARKISON, Clerk

Copies Sent to:

Carlos Bruzon  
Pike County Jail  
HC 8 Box 8601  
Hawley, PA 18428

Martin C. Carlson  
United States Attorney  
UNITED STATES ATTORNEY'S OFFICE  
Middle District of Pennsylvania  
Ste 311, William J. Nealon  
Federal Building and Courthouse  
235 N. Washington Avenue  
Scranton, PA 18501



✓

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

P.O. BOX 1148

SCRANTON, PA 18501

June 28, 2001

Carlos Bruzon  
PIKE COUNTY JAIL  
H.C. 8, Box 8601  
Hawley, PA 18428

**COPY**

Re: 1:01-cv-01176 Bruzon v. Immigration and Natu  
Judge: Sylvia H. Rambo

Dear Sir/Madam:

Receipt is acknowledged of the document noted at the foot of this letter, subject as captioned above.

The matter has been forwarded to the Court for consideration.

Very truly yours,

MARY E. D'ANDREA, Clerk

By: J. M. A.  
Deputy Clerk

Petition For Writ of Habeas Corpus     Complaint

Transfer From Other District     Other

NOTE: Please be advised that in order for service to be made a U.S. Marshal Form 285 (form enclosed) must be completed for each named defendant and returned to the Clerk's Office at the above address. Additional forms are available at the prison library or the U.S. Marshal's Office. (This does not apply to Petitions for Writ of Habeas Corpus.)

Enclosed: Notice of Consent regarding Magistrate Referral.